

**MINUTES**  
of the  
**LEGISLATIVE CONSUMER COMMITTEE**

February 15, 2008

State Capitol, Room 152, Helena, MT

**COMMITTEE MEMBERS PRESENT**

Representative George Groesbeck, Chairman

Representative Walter McNutt, Vice Chairman, via conference call

Senator Joe Tropila

Senator Terry Murphy

**STAFF PRESENT**

Robert A. Nelson, Consumer Counsel

Larry Nordell, Economist

Mary Wright, Attorney

Mandi Shulund, Secretary

**VISITORS PRESENT**

Mike Pichette, NorthWestern Energy

Dave Gibson, Qwest

Pat Gervais, Legislative Fiscal Division

**CALL TO ORDER**

The meeting was called to order by Representative Groesbeck.

**MINUTES OF THE PREVIOUS MEETING**

Senator Tropilla asked to have on record Bob's response to his review of two letters in the Great Falls Tribune that Senator Tropila referenced at the last meeting.

MOTION: Senator Tropilla moved to enter Bob's response into the minutes.

VOTE: The motion passed unanimously.

MOTION: Senator Tropilla moved approval of the August 23, 2007 meeting minutes.

VOTE: The motion passed unanimously.

## **BOB NELSON PROVIDED THE FOLLOWING HIGHLIGHTS OF CASES**

### **CURRENTLY PENDING:**

#### **NorthWestern Energy**

D2007.7.82-Application for Increased Gas and Electric Delivery Service Rates: This application pertains to non-commodity or delivery costs while actual gas and electric purchase costs are dealt with in separate cost trackers and are flowed through on a monthly basis. In this docket NWE requested an increase of \$10.5 million for the gas utility (3.9% overall on the bills and 11.5% for transmission and distribution cost) and a \$31.4 million increase for the electric utility (6.6% overall on bills and 14.8% for transmission and distribution costs). MCC engaged in quite a bit of discovery and discussion with NWE, that eventually resulted in a settlement agreement filed with the Commission on 12/7/07. Several key components were agreed upon, including a \$10 million annual increase for the electric utility and a \$5 million increase for the gas utility. Also in the agreement MCC supported NWE's interim request, which was granted by the Commission, adding an accelerating effect to the recovery. Another component of the agreement was that, of the amount NWE spends for its capital expenditures in 2008 and in 2009, \$19.4 million each year would not be rate based.

The reason for that two year period is because NWE agreed to file rate case requirements by 7/1/09 and if it appears NWE is over earning, MCC has the ability to address a rate adjustment with the Commission without any further action. MCC originally thought the \$15 million would be treated as customer contributed capital but the net affect of the agreement was essentially that of the \$15 million per year rates were increasing by, that money is going into capital improvements, basically attributed to contributions by the rate payers rather than the shareholders. In addition, NWE agreed to provide 21 megawatts of Colstrip 4 power at a discount of \$19 from the Mid-C market price. This will displace purchases otherwise made on the market and NWE has estimated the net present value of that agreement, which will last for roughly 6 years, to be just over \$16 million so in addition to the \$15 million rate increase, there will be further reduction in purchase cost. MCC believes the agreement is good for consumers and also helps NWE maintain its cash flow. The Commission has expressed some reservation toward the agreement in how it may compare to a fully litigated case. Other parties have filed comments on the stipulation and a hearing is set for 3/31/08. The allocated cost of service and rate design portion, to be filed at a later date, will determine how revenue increases will be allocated to customer classes and how rates will be designed. Senator Murphy asked Bob who among the owners is the agreement with for power at that price from Colstrip. Bob said the owner of that power at this point is NWE.

D2007.5.46-Annual Application for Electric Tracker True-Up: Electric costs are tracked and adjusted monthly with a review done every year to audit the trackers and project future costs. The two components of the trackers are looking back at costs the company has incurred and projecting costs for the upcoming year, both of which impact costs the company charges. In these trackers, two years have been accumulated due to the consolidation of some dockets. MCC filed testimony of Dr. John Wilson on 10/5/07 and he concluded that costs incurred for the historic tracker period were appropriate and recoverable for the most part but the projected costs were almost 30% higher than the historic levels. NWE had anticipated that increase in costs with the PPL contract roll-over and had phased that in, so customers did not

see a 30% increase. Dr. Wilson expressed concerns about the so-called declining clock auction NWE had conducted trying to purchase power to replace spot purchases and some of the PPL contracts. At the time the auction was conducted, MCC filed comments voicing concerns that NWE would experience difficulty getting good prices with the Montana market being controlled by PPL and Bob feels that is exactly what occurred. Dr. Wilson said NWE used their buying power with PPL to negotiate a downward adjustment in the contracts by giving up their rights to pursue the market power issues with PPL. As long as NWE had bargaining leverage, Dr. Wilson questioned why NWE did not replace more of those volumes with negotiated purchases rather than going through the auction with higher prices. A hearing was held 12/19/07 and the briefing period is complete.

FERC Docket No. EL07-94-PPLM-MCC v. PPL Montana and MCC v. FERC,  
Petition for Review of FERC Order, Docket Nos. 07-73256 and 07-73547: These dockets relate to FERC and the decisions they have made rejecting MCC's arguments concerning PPL's market power. If it can be established that PPL has market power, FERC needs to regulate PPL's rates rather than giving them market based rate authority. FERC issued an adverse decision on this issue, which MCC appealed 8/14/07 to the Ninth Circuit Court of Appeals. The Montana Commission also filed a Petition to Review that decision and a Motion to Consolidate the two cases, which was granted by the Ninth Circuit. REC in Butte has intervened on MCC's side and PPL has intervened on the side of FERC. MCC and PSC initial briefs have been filed. MCC's initial brief questioned whether FERC made an error in not assessing the relevant market, which MCC believes they did because NWE needed to purchase longer term contracts but FERC tested short-term market power. MCC also believes it was an error of FERC, when they calculated PPL's market share, to exclude generation they would be using to make the longer term sales to NWE. FERC is supposed to look at the market share of all participants to determine if PPL has market power, but in doing that they excluded all generation PPL was selling at that time to NWE because they view that as committed contracts and not available for sale to NWE. MCC believes this is not an accurate picture

because that was the source of the generation that PPL resold when those contracts expired and needed to be replaced. Also, in assessing market power and determining what generation PPL had versus all generation available, it was a mistake for FERC to include generation committed to other utilities. Docket EL07-94 is a complaint MCC filed with FERC when the new contracts were executed. MCC filed the complaint, in effect, to try and cover all bases making sure if the Ninth Circuit decision is a favorable one, it is not for naught because FERC is not going to apply that decision to the new contracts entered into. Although FERC dismissed that complaint MCC feels that is positive because FERC did indicate they had authority to provide retroactive relief and would do that if the Ninth Circuit reverses their order.

N2007.11.138-2007 Electric Default Supply Resource Planning and Procurement

Plan: These filings look at the company's projections regarding resource needs and how to fulfill those needs. Commission rules require the company to file these plans every two years. This 2007 plan was filed 12/17/07 and the Commission requested comments be filed by 3/14/08, with a hearing scheduled for 4/16/08. On a related topic, NWE recently announced the MillCreek Gas Plant Project, a gas fired plant of roughly 130 megawatts. NWE has indicated they intend to file an application for pre-approval under HB25.

D2007.7.80-Monthly Electric Tracker: The October Electric Tracker filed 9/14/07 resulted in a residential rate decrease to \$.056811/kwh (.8%); The November Electric Tracker filed 10/15/07 resulted in a residential rate decrease to \$.056058/kwh (1.33%); The December Electric Tracker filed 11/15/07 resulted in a residential rate increase to \$.056774/kwh (1.28%); The January Electric Tracker filed 12/17/07 resulted in a residential rate decrease to \$.056600/kwh (.31%); The February Electric Tracker filed 1/15/08 resulted in a residential rate increase to \$.057592/kwh (1.75%).

D2007.12.147-Complaint of City of Great Falls: The City of Great Falls filed a complaint on 12/12/07 alleging that NWE has refused to allow Electric City Power to

provide service to certain individual meters. Customers elected to get service from Electric City Power but as new meters or new service locations are acquired, it is unclear whether these services are covered by that election or if NWE is required to serve those customers. NWE has answered that complaint and a hearing is likely to be scheduled.

D2007.11.131-Complaint of Whitehall Wind: Whitehall Wind filed a complaint alleging that NWE has failed to publish and provide avoided cost information. Whitehall Wind is attempting to develop a 50 megawatt wind project and believes NWE is obligated under PURPA to purchase that as QF power so they are interested in getting a definite idea from NWE what the avoided cost rate would be. When NWE restructured in the late 1990's, they did not plan to be owning or acquiring generation in the future so the Commission excused them from filing avoided cost information but there was a dispute whether they are still obligated under other rules to continue filing the information. The Commission also believes, due to the competitive wholesale market situation rather than a fully vertically integrated utility, that large QF projects such as this should participate in the bidding process that the Commission anticipated rather than just having avoided cost rates. The Commission did continue to set avoided cost rates for QF's under 3 megawatts. NWE currently has more of the supply obligation and the Commission believes in terms of larger supply from the wholesale market, it would be fitting to have utilized the competitive process.

D2007.12.152-Petition of Two Dot Wind: Two Dot Wind is a QF developer wanting to set terms for existing QF small power production. Two Dot Wind has six sites totaling 4 megawatts of capacity and claim they were unable to reach an agreement with NWE for a QF contract. MCC was interested in Two Dot's assertion that they were not imposing any wind integration costs on NWE although the Commission previously determined that wind QF's were responsible for those costs. MCC filed testimony of Larry Nordell on 1/23/08 addressing this issue. MCC felt that PURPA intended to put QF developers equal with other resources but, at the same time, also

intended to protect consumers so those costs were not higher than what avoided costs would have been. MCC believes this situation involves some integration costs as part of the avoided costs and that it would be appropriate for the Commission, NWE, and Two Dot to take the integration costs into account. A hearing is scheduled for 3/6/08.

D2003.8.109-Petition of MCC for Investigation: This case goes back to the NWE bankruptcy proceeding. At that time, MCC was concerned with NWE's use of regulated assets to support its non-regulated affiliated ventures, which ended up being the reason the utility filed for bankruptcy. Part of the settlement in the bankruptcy case was the agreement that NWE would only use a certain amount of utility financing for non-regulated activities, those amounts being adjusted depending on NWE's financial ratings as the utility got stronger and was able to utilize more of its credit. MCC believes the applicable cap based on the current ratings as they are known to be is \$75 million and feels that recently NWE had used amounts of financing that exceeded that cap to acquire ownership interest in Colstrip 4. MCC recently filed a petition with the Commission to initiate an investigation of whether NWE has violated that cap and what that cap should be based on credit ratings and other activities that have occurred over the past couple of years. The petition also asks the Commission to investigate what the impact of NWE's activity might be and what NWE's plans are in utilizing those assets. The Commission has issued a Notice of Petition that required a response from NWE by 2/28/08.

FERC Docket EC08-26-Request for Authorization pursuant to FPA 203 to transfer Ownership Interest in C4: This is a FERC docket related to the previous case. NWE is requesting FERC authorization to transfer the ownership interests acquired using this financing to a subsidiary affiliate. MCC was not aware of this filing but has since filed a Petition for Late Intervention asking FERC to dismiss the filing based on the Montana Commission's jurisdiction to enforce the bankruptcy Consent Order.

D2005.6.106, D2004.7.99, D2004.12.192 (consolidated)-PSC Investigation and Direction on Electric USB: These consolidated cases relate to NWE's electric USB programs and Interim Orders have been issued. On an interim basis a few years ago, the Commission increased the electric low income discount from 15% to 25% and increased the gas discount from 15% to 30%, although the gas discount was eliminated during the summer months. The Commission issued a third Interim Order on 10/1/07 at the request of some parties in these dockets to, on an interim basis, implement those changes for this heating season. The Commission intends to revisit these issues and make permanent changes.

D2007.5.44-Annual Application for Gas Tracker True-Up: This docket relates to the annual gas tracker true-up. Trackers were originally established for the gas utilities, but although the gas utility trackers were established before electric utility trackers, the electric utility actually got ahead of the gas utilities on the biennial procurement plan filings. Once some experience with the electric utility had been established, discussions began about the gas utility and disallowances the Commission had made. MCC and NWE agreed there should be a similar biennial procurement planning process for the gas utility. MCC believed this would help give the company some indication of MCC's feedback on their procurement plans and would help reduce the risk of gas procurement. So far there have been two gas procurement plans. In this annual gas tracker true-up, MCC filed the testimony of George Donkin on 10/17/07. Mr. Donkin said that NWE had been doing a lot of "fixed for float" deals which are financial transactions where indexed based contracts are converted to fixed price contracts. Mr. Donkin calculated those activities had cost \$8.6 million more, if comparing actual market prices with what NWE had ended up paying, plus NWE had done other fixed price deals that increased that cost by another \$2.7 million, totaling over an \$11 million increase for the historic period in this tracker. Mr. Donkin did not recommend any disallowances based on that because this was a large part of the procurement planning process and the Commission was aware of this activity. At the same time, Mr. Donkin recommended the Commission find out what NWE was planning to continue doing regarding fixed price deals because he



felt rate payers would continue to incur costs higher than they otherwise would. MCC and NWE had some discussion about settling this docket, but NWE filed a Motion to Dismiss the hearing, claiming there were no issues for the Commission to decide since MCC had not asked for any disallowances. The Commission ultimately agreed, over MCC's protest to hold a hearing in order to consider Mr. Donkin's recommendations and concerns, but the Commission issued a Final Order on 1/17/08 stating there were no contested issues within the scope of the docket. Bob found this troubling, because in his view the two aspects of the annual trackers are historical and future projections and Mr. Donkin claimed NWE should do something different with the future projections piece. Because the Commission concluded there were no issues within the scope of the docket, Bob took that to mean projected costs and future activity of the company is no longer an issue in the tracker dockets, which concerns Bob because, in effect, the Commission has transferred that issue to the biennial procurement planning dockets which are meant to be more general in nature and have never been expected to provide as much information. The Commission acknowledged that they recommended NWE engage in fixed price purchases in the procurement plan comments and their primary emphasis was minimizing price volatility, indicating that NWE will not always achieve bottom of the market natural gas prices. MCC agreed with this, but Mr. Donkin has been urging the Commission for quite some time to also include financial hedging, an idea the Commission has consistently rejected. The Commission also commented they did not agree with evaluating gas procurement activities based on subsequent market results, which disappointed Bob because MCC was not asking them to make any retroactive changes. MCC did look at historical information to give the Commission an indication how things were playing out and that information could give them a basis for changing things in the future. Bob feels that flexibility needs to be maintained but the Commission has minimized the ability to do that. Bob provided a chart illustrating these concerns and MCC intends to continue pursuing this issue with the Commission. Representative Groesbeck asked if NWE's prices were higher than MDU because they used "fixed for float" and if so, were there any other factors causing prices to be higher. Bob said the graph is more of a general picture and that

there more than likely are other factors as well, such as MDU having access to gas in a different market not available to NWE or NWE having different ability to use storage than MDU.

D2006.7.81-Monthly Gas Tracker: The October Gas Tracker filed 9/14/07 resulted in a residential rate decrease to \$10.09; The November Gas Tracker filed 10/16/07 resulted in a residential rate increase to \$10.10; The December Gas Tracker filed 11/15/07 resulted in a residential rate increase to \$10.23; The January Gas Tracker filed 12/14/07 resulted in a residential rate decrease to \$10.05; The February Gas Tracker filed 1/15/08 resulted in a residential rate increase to \$10.79.

### **Montana Dakota Utilities**

D2007.7.79-Application for Increased Electric Rates: This is the first general application MDU has had in many years for their electric utility, which was filed 7/12/07. MDU requested a \$7.8 million increase, roughly 22% overall. The proposed increase varied from 18.4% to 33% for customer classes and was based largely on a change in generation resources available to them. MCC filed testimony on 10/24/07. Al Clark reviewed revenue requirement, recommending an increase of just under \$1 million, not taking into account off system sales deductions. Dr. John Wilson reviewed cost of capital, recommending a 10% return on equity and reviewed the cost allocations, proposing a different allocation that would not impact residential and small business customers as much. MDU requested, for the first time, an electric power cost tracker, which Dr. Wilson recommended approval of, but with a 90/10 split shared with customers. MDU presented a depreciation study, and Jack Pous recommended a \$2 million decrease in depreciation expense. The Commission granted an interim increase on 12/5/07 of \$3.4 million. MCC participated in discussions with MDU and Encore, another intervenor, resulting in a settlement agreement that has been filed with the Commission. The agreement would result in a \$4.1 million overall revenue increase, made up of the interim already in place and another increase of \$700,000 effective 1/1/09. There is also a stipulation of 10.25% return on equity and the authorization of a monthly tracker with

a 90/10 sharing mechanism which would be reevaluated in 2011. Some agreement was reached on what depreciation rates would be contained in the rates MDU is currently charging and an agreement on cost allocation of about half of what MDU proposed for residential and small general service customers. A hearing was held in Glendive and additional hearings will be held in Helena.

D2007.9.107 Monthly Gas Trackers: The October monthly tracker filed 9/14/07 resulted in an decrease of \$1.44/dk showing current gas costs of \$4.90/dk; The November monthly tracker filed 10/10/07 resulted in an decrease of \$0.76/dk showing current gas costs of \$4.15/dk; The December monthly tracker filed 11/9/07 resulted in a increase of \$1.68/dk showing current gas costs of \$5.84/dk; The January monthly tracker filed 12/10/07 resulted in an increase of \$1.73/dk showing current gas costs of \$7.57/dk; The February monthly tracker filed 1/10/08 resulted in an increase of \$1.05/dk showing current gas costs of \$8.85/dk; The March monthly tracker filed 2/8/08 resulted in an increase of \$.65/dk showing current gas costs of \$9.27/dk.

### **Energy West**

D2007.6.63-Annual Gas True-Up: This application was filed 6/19/07 and a Procedural Order has been issued, setting a hearing for 6/26/08.

D2007.7.75-EWM Monthly Gas Trackers: The October Gas Tracker filed 9/5/07 resulted in a residential rate decrease to \$7.22 Mcf; The November Gas Tracker filed 10/3/07 resulted in a residential rate increase to \$8.42 Mcf; The December Gas Tracker filed 11/7/07 resulted in a residential rate increase to \$9.14 Mcf; The January Gas Tracker filed 12/7/07 resulted in a residential rate decrease to \$8.92/Mcf; The February Gas Tracker filed 1/7/08 resulted in a rate increase to \$9.06/Mcf; The March Gas Tracker filed 2/8/08 resulted in a rate increase to \$9.25/Mcf.

Energy West has indicated that they are attempting to acquire Cut Bank Gas Company.

### **Cut Bank Gas Company**

D2007.8.96-Cut Bank Gas Annual Gas Tracker True-Up: This true-up was filed 8/22/07. MCC questioned this filing because Cut Bank Gas has never been authorized to implement this kind of tracking proceeding.

D2007.11.130-Cut Bank Gas Application for Gas Cost Monthly Tracker Tariff: Due to the events in the docket above, on 11/5/07 Cut Bank gas applied for a monthly tracker tariff for gas utility and proposed a tracking mechanism. MCC will review this filing.

### **Mountain Water Company**

D2007.9.104-Mountain Water Company Application for Power Cost Tracking Adjustment: Mountain Water Company submitted this filing 9/12/07 requesting a 1.02% increase. The Commission issued an order 9/27/07 implementing the increase on an interim basis pending the filing of Mountain Water's next general case.

D2005.4.49-Mountain Water Application to Increase Water Rates: An ongoing issue in this case has been the proper allocation of fire protection costs. The Commission had ordered, after much discussion, that The City of Missoula be relieved of paying those costs and that those costs be spread back to rate payers. A filing then was made by Mountain Water as to exactly which rate payers were going to be charged those costs and they proposed the cost be primarily allocated to the unmetered customers because they viewed those customers as currently being undercharged. Larry filed testimony on MCC's behalf on 4/17/07 not objecting to that allocation but suggested a few other studies be conducted to look at metering large irrigation accounts and also to look at the marginal costs of water consumption. The

Commission recently issued an order on 11/29/07 rejecting Mountain Water's proposed allocation and adopting an equal percentage allocation to all customers of those fire protection costs, substantially agreeing with MCC's recommendation of metering and marginal cost studies.

### **Stillwater Utility, LLC**

D2008.2.15-Application to Implement Initial Water Rates: This application was filed on 2/10/08 requesting implementation of initial water rates at \$51.02 bimonthly in addition to \$.65 /1000 gal. MCC is reviewing this filing.

### **HB25**

N2007.10.116-Request for Comments on Potential Amendments and Repeal of Rules: The Commission has requested comments on potential amendments for rules to implement HB25. MCC filed comments 11/2/07, stating primarily that the Commission needs to make the rules more clear with respect to NWE's ability to own resources and not discourage opportunities to purchase from affiliates such as Colstrip 4.

### **PPLM**

FERC Docket No. ER00-1703-002, Triennial Market Power Update: Right now, this case does not implicate rates charged in Montana but MCC is monitoring this docket.

### **Firelight Meadows**

D2007.4.33-Application for Transfer of Water and Sewer Utility: This application was filed on 4/4/07 requesting transfer of water and sewer utility from Firelight Meadows

to HLH, LLC for \$1.6 million. MCC intervened in this case and on 10/3/07 the Commission issued a Final Order approving the transfer.

### **Phantom Hills Water Company**

D2004.4.61-Application for Permanent Initial Rates: Filed on 10/5/07, Phantom Hills is requesting a 100% increase from average rates. MCC intervened in this case and a hearing is scheduled for 6/5/08.

Larry continues to work with transmission issues and generation planning and is still participating in the Transmission Advisory Committee and Electric Technical Advisory Committee.

### **MARY WRIGHT PROVIDED THE FOLLOWING HIGHLIGHTS OF TELECOM CASES CURRENTLY PENDING:**

#### **Eligible Telecommunications Carrier Cases**

A carrier with ETC status can get money from the Federal Universal Service Fund and most of the companies that have competitive ETC status are wireless companies.

D2004.1.6 - Triangle Communications Systems, Inc: Triangle is a wireless company that is an affiliate of Triangle Telephone Cooperative Association with North Central Montana Communications. This request for ETC status has been approved by the Montana Commission, but because it involved a petition to alter the geographic reach of the underlying wireline carrier's service area, it also has to be approved by the Federal Communications Commission. The other intervenor in this case, Montana Telecommunications Association, is challenging that approval at the FCC.

D2007.2.18-MTPCS, LLC d/b/a/Chinook Wireless: Chinook bought the wireless assets of Three Rivers and Blackfoot Cooperatives and is asking for ETC status through out the state in Blackfoot, Three Rivers, and Qwest service areas. A hearing has been held and briefing is complete.

### **Qwest**

N2006.6.81-Qwest Tariff Transmittal 06-10 Residence and Business Customer Incentive Programs: These programs allow Qwest to give certain incentives to customers in order to keep them or to induce them to return to Qwest. The hearing has been held and the Commission has issued a Final Order approving Qwest's application, but intervenor OneEighty Communications filed a Motion for Reconsideration. The Commission recently granted part of the motion, but basically kept the same result.

D2005.6.105-PSC Investigation into Qwest's use of USB Funds: Qwest's USB funds amounted to \$16 million last year. This case has been partly prosecuted but is currently suspended due to a new Commission attorney getting up to speed on the case.

Cause No. CDV 2003-464 - Qwest v. PSC and MCC: The Commission started this case in 2003 to try and investigate Qwest's rates, which are required by law to be just and reasonable. Qwest had been reporting in its annual reports for some time earnings well in excess of the authorize rate of return. Qwest took the Commission to court and MCC joined in at the District Court level. The judge ruled the Commission can obtain information from Qwest, but not in the particular way that it did so. This case then went to the Supreme Court and a unanimous ruling was issued in December, saying the Commission could get information from Qwest any way they wanted in pursuing its legal responsibilities to regulate Qwest.

D2006.10.143-Doty et al. v. Qwest Corporation: This complaint specifically about Qwest's rates was filed by then Senator Ken Toole with the substitute plaintiff being

Russell Doty. MCC has intervened and filed testimony, recommending rate reductions of up to 23%. The date for filing rebuttal testimony has been delayed pending resolution of discovery disputes.

D2008.1.6-PSC Investigation of Qwest Corporation Regarding the Justness and Reasonableness of Rates, Schedules and Terms and Conditions of Service: Going back to Cause No. CDV 2003-464, the Commission has ordered Qwest to file, by 7/1/08, information consistent with the minimum filing requirements of a rate case. However, the Commission did give Qwest the alternative to file an alternative form of regulation by 3/31/08, which is permitted under the statute, but said that MCC needed to approve the filing. MCC is currently in confidential negotiations with Qwest and expect that if a settlement is agreed upon, the PSC investigation into the use of USB funds and the Doty complaint will also be resolved. Senator Murphy asked when just and reasonable profit is tabulated, if that tabulation is only for Montana and if not, how do profit margins of other states compare Montana. Mary said that only Montana is looked at in calculating just and reasonable rates. Qwest serves 14 Western states and the total company expenses are allocated to the various jurisdictions and may not be directly observable. Senator Murphy asked if Qwest has acknowledged the fact that they have been collecting excess profits for the past several years. Mary said that each year Qwest files annual reports with the Commission that contain the best possible representation of current year results, including a calculation of return on rate base which has exceeded what the Commission last authorized since 2000.

D2007.10.124-3 Rivers Petition for Arbitration for Interconnection Agreement with Alltel Communications: This petition asked the Commission to arbitrate an interconnection agreement with Alltel. 3 Rivers has alleged that Alltel is not negotiating in good faith, which is required by both state and federal law, and the main issue is the price 3 Rivers can charge Alltel for completing calls delivered over Alltel's system to 3 Rivers' end user customers. MCC is an interested party in this



case, not an intervenor. Each party has objected to almost all data requests of the other party and this case has to be completed in 120 days.

D2008.1.3- Ronan and Hot Springs Telephone Complaint: Ronan Telephone Company and Hot Springs Telephone Company filed a complaint against Qwest having to do with completing transiting traffic originated on other systems besides Qwest, Qwest being a third party carrier that does the transporting. Ronan and Hot Springs want to collect terminating access charges, preferably from Qwest, and have asked the Commission to join as respondents in this case because 360Networks, Chinook Wireless, CenturyTel, IDT America, Wiltel Communications, Verizon Wireless, Alltel Communications and Commpartners, LLC may be companies liable for these access charges. MCC will intervene in this case.

Senator Tropila said there have been articles in the Great Falls Tribune about Chinook Wireless buying Blackfoot and 3 Rivers and when Chinook applied to do this, Chinook indicated that they had rights to the entire state. Mary said it would be almost the entire state but there are some areas not in the service area. Another issue in this case is the technology that Chinook uses is not compatible with most cell phones so they are claiming a public benefit by building out their system but only Chinook and T-Mobile customers are able to use it. This means anyone in an area that Chinook had built out with phones other than Chinook and T-Mobile would not even be able to call 911.

### **HIRING OF EXPERT WITNESSES**

MOTION: Representative McNutt moved approval to hire the services of the following expert witnesses:

D2007.6.63-EWM 2007 Annual Gas Tracker True-Up: George Donkin

VOTE: The motion passed unanimously.

## **FINANCIAL REPORT**

The January report was presented to the Committee. Contracted services is the largest portion of the budget and as of the end of December, which is 50% of the fiscal year, just over 50% of the base contracted services budget had been spent. Bob expects that, at this rate, a substantial portion of the contingency fund may need to be used this year. This has been an unusually heavy case load year due to the NWE gas and electric general filings, MDU's general electric filing, the PPL appeal and the Qwest activities. The Committee also received the latest audit report for fiscal years 2006 and 2007, dated 10/23/07. MCC received a clean audit, citing no issues or recommendations.

## **Public Comments**

Based on HB94 requirements, a public comment period was offered, but none was given.

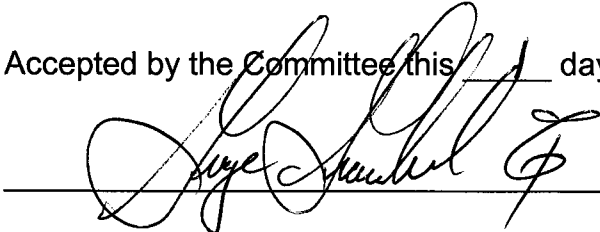
## **Adjournment**

There being no further business to come before the Committee, the meeting adjourned.

Respectfully submitted,

\_\_\_\_\_, Robert Nelson, Consumer Counsel

Accepted by the Committee this \_\_\_\_\_ day of \_\_\_\_\_, 2008

\_\_\_\_\_, Chairman.